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Conference on Disarmament

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Note verbale dated 1 March 2014 from the Permanent Mission of Ukraine addressed to the Acting Secretary-General of the Conference on Disarmament transmitting the briefing note concerning the guarantees of the sovereignty, territorial integrity and inviolability of the territory and frontiers of Ukraine

The delegation of Ukraine to the Conference on Disarmament presents its compliments to the Acting Secretary-General of the Conference, Mr. Michael Møller and has the honour to transmit herewith the briefing note concerning guarantees of the sovereignty, territorial integrity and inviolability of the territory and frontiers of Ukraine.

The delegation of Ukraine would appreciate it if the Briefing note could be immediately issued as an official document of the Conference on Disarmament and circulated to all member States and observer States of the Conference.

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Briefing note concerning the guaranties of the sovereignty, territorial integrity and inviolability of the territory and frontiers of Ukraine
Pacta Sunt Servanda

Ukraine's territorial integrity, inviolability of its territory and frontiers are guaranteed by the provisions of a number of international multilateral and bilateral legal instruments. Some of them contain a general prohibition of the use of force or threat of force, reinforce the principle of respect for territorial integrity and inviolability of frontiers, contain requirements to settle international disputes by peaceful means. Others contain provisions on guaranties of territorial integrity and inviolability of frontiers.

I. Charter of the United Nations

The UN Charter (signed on June 26, 1945, entered into force on October 24, 1945) consolidated the ***principle of non-use of force or threat of force***. Paragraph 4 of Article 2 of this fundamental international legal instrument stipulates that:

> *"All Member shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations."*

The principle of the prohibition of the use of force or threat of force imposes on the subjects of international law the following responsibilities: (a) to refrain from using force (direct or indirect); (b) to refrain from the threat; (c) refrain from any action which is a manifestation of force with the purpose to compel another state to abandon the full implementation of its sovereign rights; (d) to abandon acts of repression by force; 5) to forsake force or threat of force as a means of settling disputes.

Thus, the UN Charter also established ***the principle of territorial integrity of states***, as force or threat of force can not be applied against the territorial integrity or political independence of any State.

The principle of territorial integrity of states imposes an obligation to refrain from any action incompatible with the purposes and principles of the Charter of the United Nations, in relation to: (a) territorial integrity; (b) political independence; (c) the unity of any state; (d) actions that constitute use of force or the threat of it; (e) the appropriation of territory, directly or indirectly, using force in violation of international law.

The Charter of the United Nations also promulgates universal application of ***the principle of peaceful settlement of disputes***. According to paragraph 3 of Article 2, *"All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."*

As of today the principle of the peaceful settlement of disputes binds the subjects of international law to such commitments: (a) settle all disputes and disagreements solely by peaceful means; (b) settle disputes within the shortest term; (c) do not terminate the process of the peaceful settlement and seeking of mutually acceptable solutions; (d) implementation of peaceful means recognized by the international law (negotiation, inquiry, arbitrage, mediation, judicial settlement, other means of their choice, agreed before the dispute; (e) refrain from an ultimate manner; (6) refrain from any action that can deepen the dispute; (f) take into account interests of the other Party to the dispute concerned; (g) implement the decision in an approved manner.

II. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations 1970

A. The principle that States shall refrain in their international relations from the threat or use of force

Every State has the duty to refrain in its international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. Such a threat or use of force constitutes a violation of international law and the Charter of the United Nations and shall never be employed as a means of settling international issues.

Every State has the duty to refrain from the threat or use of force to violate the existing international boundaries of another State or as a means of solving international disputes, including territorial disputes and problems concerning frontiers of States.

B. The principle that States shall settle their international disputes by peaceful means

Every State shall settle its international disputes with other States by peaceful means in such a manner that international peace and security and justice are not endangered.

States parties to an international dispute, as well as other States shall refrain from any action which may aggravate the Situation so as to endanger the maintenance of international peace and security, and shall act in accordance with the purposes and principles of the United Nations.

C. The principle concerning the duty not to intervene in matters within the domestic jurisdiction of any State

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.

No State may use or encourage the use of economic political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.

III. Other United Nations acts

Other important UN acts on this topic are:

- UN Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (#2131, 21.12.1965);
- UN Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States (9.12.1981);
- UN Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations (18.11.1987);

- UN General Assembly resolution on the Definition of Aggression (#3314, 14.12.1974).

In its Resolution 3314 (XXIX) of 14 December 1974 the UN General Assembly brought to the attention of the UN Security Council the formal definition of aggression, which is to be used as a guideline when determining the fact of aggression in accordance with the UN Charter. Among other things, aggression can be defined as:

- the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- the blockade of the ports or coasts of a State by the armed forces of another State;
- the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of the agreement.

It should be also noted that clause 3 of article 5 of the Annex to the Definition of Aggression states, that no territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

IV. Acts of Organization on Security and Cooperation in Europe (CSCE/OSCE)

A. Final Act of Conference on Security and Cooperation in Europe of 1975.

In the "Declaration on Principles Guiding Relations between Participating States" of Final Act, undersigned by High Representatives of 35 Participating States, stated ten fundamental principles of international relations. In particularly, these include:

(a) Sovereign equality, respect for the rights inherent in sovereignty.

The participating States will respect each other's sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence. They will also respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations.

(b) Refraining from the threat or use of force.

The participating States will refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations and with the present Declaration.

(c) Inviolability of frontiers.

The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.

In the Final Act of Commission on Security and Cooperation in Europe of 1975, the participating States recognized that they will regard as inviolable all one another's frontiers

as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.

(d). Territorial integrity of States.

The obligation of refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating State was declared.

The Article IV of Final Act of Commission on Security and Cooperation in Europe of 1975 states that "participating States will respect the territorial integrity of each of one another's..... the participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal."

(e) Peaceful settlement of disputes.

The participating States will settle disputes among them by peaceful means in such a manner as not to endanger international peace and security, and justice. It declared that they will use peaceful means for the settlement of disputes of their own choice.

(f) Non-intervention in internal affairs.

The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations. They will accordingly refrain from any form of armed intervention or threat of such intervention against another participating State.

B. Other CSCE/OSCE acts

Important CSCE/OSCE acts on this issue include:

- Concluding document of the Madrid meeting of representatives of the participating states of the Conference on Security and Cooperation in Europe of 1983;
- Concluding Document of the Vienna Meeting of the CSCE of 19 January 1989;
- Charter of Paris for a New Europe of 1990;
- Concluding Document of the CSCE Valette meeting of 1991.

V. Acts of the Commonwealth of Independent States (CIS)

An Agreement which established the Commonwealth of Independent States (Belavezha Accord) was signed on December 8, 1991. On December 10, 1991 the Agreement was ratified by Parliaments of Ukraine and Belarus and on December 12 by the Parliament of Russia.

The preamble of this international legal act indicates that the High Contracting Parties intend to *"... to develop their relations on the basis of mutual recognition and respect for state sovereignty, the inalienable right to self-determination, equality and non-interference in internal affairs, non-use of force, economic or any other methods of pressure, reconciliation of contentious issues by conciliatory means, other universally recognized principles and norms of international law ..."*

According to Article 5 of this Agreement «*the High Contracting Parties recognize and respect each other's territorial integrity and the inviolability of existing borders within the Commonwealth...* "

VI. Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons

Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons or Budapest Memorandum was signed on December 5, 1994 between Ukraine, the United States of America, the Russian Federation and the United Kingdom of Great Britain and Northern Ireland.

The People's Republic of China and the French Republic have also confirmed their commitment on security guarantees to Ukraine. According to the Memorandum Ukraine has received guarantees of its sovereignty and security in exchange for the accession to the Treaty on the Non-Proliferation of Nuclear Weapons as a non-nuclear-weapon state and the removal of all nuclear weapons from its territory, which are as follows:

(1) the United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland, reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to respect the independence and sovereignty and the existing borders of Ukraine;

(2) they reaffirm their obligation to refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, and that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations;

(3) these countries reaffirm their commitment to Ukraine, in accordance with the principles of the CSCE Final Act, to refrain from economic coercion designed to subordinate to their own interest the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind;

(4) the Guarantor states reaffirm their commitment to seek immediate United Nations Security Council action to provide assistance to Ukraine, as a non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, if Ukraine should become a victim of an act of aggression or an object of a threat of aggression in which nuclear weapons are used;

(5) the Guarantors reaffirm, in the case of Ukraine, their commitment not to use nuclear weapons against any non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons, except in the case of an attack on themselves, their territories or dependent territories, their armed forces, or their allies, by such a state in association or alliance with a nuclear weapon state;

(6) The United States of America, the Russian Federation, and the United Kingdom of Great Britain and Northern Ireland will consult in the event a situation arises which raises a question concerning these commitments.

In the Declaration of December 5, 1994, signed by the President of the French Republic, there is a commitment regarding the assurances of security of Ukraine on the part of this country. It also confirms France's obligation to respect the independence and sovereignty of Ukraine within its present borders according to the principles of the Final Act of the CSCE and Paris Charter for the New Europe.

In the Statement of the People's Republic of China of December 5, 1994 the security assurances of our country, fixed in the Budapest Memorandum, are reconfirmed. There is

an analogous commitment in the Joint Statement of the Presidents of Ukraine and the USA of April 12, 2010. It was confirmed in the United States–Ukraine Charter on Strategic Partnership of December 19, 2008.

Thus the security assurances of Ukraine, laid down in the Budapest Memorandum of December 5, 1994, are confirmed by its signatory countries the Russian Federation, the United States of America, the United Kingdom. They are also included in the Russia–US Joint Statement of 04.12.2009, Joint Statement of the Presidents of Ukraine and the USA of 12.04.2010, reply of the Prime Minister of Great Britain in the format of a letter in reply to the letter of the President of Ukraine of 05.01.2010, note of the Embassy of the People's Republic of China in Ukraine of 15.12.2009 as well as Ukraine and China Joint Statement of 02.09.2010, all confirming the security guarantees of Ukraine as a non-nuclear state.

VII. Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation

On May 31, 1997 the Treaty on Friendship, Cooperation and Partnership between Ukraine and the Russian Federation was signed. It entered into force on April 1, 1999.

In the preamble of this document Ukraine and Russia reaffirmed *"their adherence to the norms of international law, primarily to the purposes and principles of the United Nations Charter, and compliance with all obligations taken within the frameworks of the Organization for Security and Cooperation in Europe."*

According to the Article 2 of this Treaty the Parties committed under the provisions of the UN Charter and the obligations of the CSCE Final Act to respect the territorial integrity of each other and reaffirmed the inviolability of existing borders between them.

In the Treaty's Article 3, the Parties clearly committed its intention to build *"a relationship with each other under the principles of mutual respect for sovereign equality, territorial integrity, inviolability of borders, peaceful settlement of disputes, non-use or threat of force, including economic and other means of pressure, the right of peoples to freely dispose of their fate, non-interference in internal affairs, respect for human rights and fundamental freedoms, cooperation between states, conscientious fulfilment of international commitments and other universally recognized norms of international law".*

According to the Treaty's Article 4, the Parties committed to take efforts towards resolving all unsettled issues only by peaceful means and to cooperate in the prevention and settlement of conflicts and situations that affect their interests.

To this end, according to the Treaty's Article 7, *"in case of a situation, which in the opinion of one of the High Contracting Parties, threatens peace, violates peace or affects the interests of national security, sovereignty and territorial integrity, the Party may request a proposal to another High Contracting Party to undertake appropriate consultations immediately. The Parties shall exchange relevant information and, if necessary, take concerted or joint action to tackle this situation".*

According to the Treaty's Article 10 *"each Party protects in due course the rights of its citizens who are living on the territory of the other Party, in compliance with commitments under the OSCE documents and other universally recognized principles and norms of international law and agreements within the CIS, which parties they are".* That means that even protecting the rights of its citizens in the territory of one of the contracting parties, the other party must respect the territorial integrity and the inviolability of its borders.